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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,156	01/28/2004	Hirotaka Komatsubara	KAN 155	2155
23995	7590	01/10/2005	EXAMINER	
RABIN & Berdo, PC 1101 14TH STREET, NW SUITE 500 WASHINGTON, DC 20005				MUNSON, GENE M
		ART UNIT		PAPER NUMBER
		2811		

DATE MAILED: 01/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	Applicant(s)	
10/765,156	<i>H. KOMATSUBARA</i>	
Examiner <i>G. Munson</i>	Group Art Unit 2811	

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ONE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- Responsive to communication(s) filed on \_\_\_\_\_.
- This action is **FINAL**.
- Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

- Claim(s) 1 - 13 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- Claim(s) \_\_\_\_\_ is/are allowed.
- Claim(s) \_\_\_\_\_ is/are rejected.
- Claim(s) \_\_\_\_\_ is/are objected to.
- Claim(s) 1 - 13 are subject to restriction or election requirement

### Application Papers

- The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.
- The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

- Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- All  Some\*  None of the:
  - Certified copies of the priority documents have been received.
  - Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - Copies of the certified copies of the priority documents have been received  
in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_.

### Attachment(s)

- Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- Interview Summary, PTO-413
- Notice of Reference(s) Cited, PTO-892
- Notice of Informal Patent Application, PTO-152
- Notice of Draftsperson's Patent Drawing Review, PTO-948
- Other \_\_\_\_\_

## Office Action Summary

Art Unit 2811

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-4, drawn to a semiconductor device, classified in class 257, subclass 506.
- II. Claims 5-13, drawn to a process for making semiconductor devices, classified in class 438, subclass 778.

The inventions are distinct, each from the other because:

Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case unpatentability of the group I invention would not necessarily imply unpatentability of the group II invention, since the device of the group I invention could be made by processes materially different than those/that of the group II invention, for example, a "nitride film" need not be formed.

Because these inventions are distinct for the reasons given above and, as shown by the above different classifications, the fields of search are not co-extensive and separate examination would be required, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Munson  
(571) 272-1659

1/04/05

*Gene M. Munson*  
**GENE M. MUNSON**  
**EXAMINER**  
**GROUP ART UNIT 2811**